WC 04-416

[redacted]

Qwest

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REDACTED - FOR PUBLIC INSPECTION

November 10, 2004

DOCKET FILE COPY ORIGINAL

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
Room TW-A325
445 12th Street, S.W.
Washington, DC 20554

RECEIVED

NOV 10 2004

Federal Communications Commission
Office of Secretary

Re: *In the Matter of Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) Pertaining to Qwest's xDSL Services*

Dear Ms. Dortch:

Enclosed with this cover letter for filing today are an original and four copies of the redacted Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) Pertaining to Qwest's xDSL Services. Portions of the Petition, Table 2, the Declarations of Rick MacInnes and Rex Morse and the attachment to the Declaration of Brad Hughes entitled "Qwest Residential DSL Churn Study" contain confidential (non-redacted) information. The non-redacted, confidential versions of the Petition, Table 2, the Declarations of Rick MacInnes and Rex Morse and the attachment to the Declaration of Brad Hughes are being filed today under separate cover. In addition, a Request for Confidential Treatment and a Proposed Protective Order are being simultaneously submitted with the confidential submission of the Petition, Table 2 and the Rick MacInnes and Rex Morse Declarations and the attachment to the Declaration of Brad Hughes.

All pages of the confidential versions of the Petition, Table 2, and the Declarations of Rick MacInnes and Rex Morse are marked "***NON-REDACTED - NOT AVAILABLE FOR PUBLIC INSPECTION***", since it was not feasible for the confidential information to be physically separated (*see* Section 0.459(a) of the Commission's rules, 47 C.F.R. § 0.459(a)). The attachment to the Declaration of Brad Hughes "Qwest Residential DSL Churn Study" is redacted in its entirety. All pages of the non-confidential versions of the Petition, Table 2, and the Declarations of Rick MacInnes and Rex Morse are marked "***REDACTED – FOR PUBLIC INSPECTION***". In the redacted versions of the Petition, Table 2 and the Declarations of Rick MacInnes and Rex Morse, where confidential information has been removed, the relevant portions of the text are marked [Redacted].

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Sincerely,

Daphne E. Butler /LER

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Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)
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Petition of Qwest Corporation for Forbearance	)
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PETITION OF QWEST CORPORATION FOR FORBEARANCE PURSUANT TO 47 U.S.C. § 160(c)

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November 10, 2004

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INTRODUCTION AND SUMMARY

Promoting the rapid deployment of broadband services is a cornerstone of federal communications policy. Congress, in Section 706 of the Telecommunications Act of 1996 (or "1996 Act"),[1] directs the Federal Communications Commission ("Commission" or "FCC") to "encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans."[2] Congress defines advanced telecommunications capability "without regard to any transmission media or technology."[3]

Despite Congress's directive the Commission has treated the services differently based upon technology. Since the enactment of the 1996 Act the Commission has taken a "'hands off' policy toward cable modem service."[4] As a result, cable modem service is the most popular service by which consumers obtain high-speed access to the Internet.[5] According to the Commission, maintaining regulatory freedom for cable modem service is an issue of "exceptional national importance."[6] Arguing on behalf of its deregulatory policy towards cable modem service, the Commission asserted that regulating broadband Internet access service as a telecommunications service "is inconsistent with, and would directly threaten,"[7] the federal policy of promoting broadband deployment.[8]

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[1] Pub. L. No. 104-104, 110 Stat. 56.

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Despite its arguments in support of its deregulatory position towards cable modem service, the Commission has not taken a similar policy towards the incumbent local exchange carriers' ("ILECs") Digital Subscriber Line ("DSL") service. Because Qwest is an ILEC and a Regional Bell Operating Company ("RBOC") its xDSL service bears the full weight of Title II and common carrier regulation, including all of the rules developed for the formerly "one-wire world" of local phone service. Competitive local exchange carriers ("CLECs"), however, are able to compete in the provision of xDSL unencumbered by these archaic regulations. Thus, every mass-market broadband competitor in Qwest's 14 states, except for Qwest, is unregulated in its provision of such services and has the freedom to compete according to free market principles. Qwest should be allowed the same freedoms.

The Commission has before it a number of pending proceedings which could potentially deregulate the ILECs' provision of xDSL services. The Commission is considering whether ILECs should be subject to dominant carrier regulation in their provision of DSL.[9] The Commission is also considering whether access to the Internet over DSL should be regulated under Title II or Title I.[10] Both of the proceedings have been pending for over two years and appear to have stalled. Recently, BellSouth filed seeking forbearance from all Title II and *Computer Inquiry* regulation.[11] Qwest supports and joins in BellSouth's recently-filed

[9] *In the Matter of Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services*, Notice of Proposed Rulemaking, 16 FCC Rcd 22754 (2001).

[10] *In the Matter of Appropriate Framework for Broadband Access to the Internet over Wireline Facilities, Universal Service Obligations of Broadband Providers, Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review – Review of Computer III and ONA Safeguards and Requirements*, Notice of Proposed Rulemaking, 17 FCC Rcd 3019 (2002).

[11] *Petition of BellSouth Telecommunications Inc. for Forbearance Under 47 U.S.C. § 160(c) From Application of Computer Inquiry and Title II Common Carriage Requirements* (filed October 27, 2004). *And see*, Public Notice, WC Docket No. 04-405, DA 04-3507, rel. Nov. 3, 2004.

forbearance petition. Qwest files this petition in order to focus attention on narrow pricing areas where Qwest is in great need of expedited relief. Qwest requests forbearance from dominant carrier tariff regulation (in particular, 15-day tariff notices, the cost support requirement, the required delays between price changes), rate averaging and resale at an avoided cost discount for its mass-market xDSL services.[12]

Since it is not consistent with the public interest to impose these regulations on the market-leading cable modem service, it is unimaginable that maintaining these regulations on the player with a [Redacted] market share is in the public interest. There is no compelling rationale why the second-place player in this market is still the only regulated player. Accordingly, the Commission should grant Qwest's petition.

I. BACKGROUND

A. Qwest's DSL Service Is Covered By Title II Regulation

Qwest has proven to be innovative and creative in how it markets these services and continues to prove that it views the Internet service providers ("ISPs") (as well as CLECs) as major suppliers of its services. For example, an end user can purchase DSL service out of Qwest's tariff and choose any one of over 400 ISPs that purchase Qwest's DSL Host product[13] or the end user may choose MSN's ISP services. Second, an end user without Qwest telephone

[12] Qwest defines the mass-market as service of a type that is normally associated with residential and small business end users. Like the FCC, Qwest defines the market in terms of the products a particular customer buys, rather than the kind of entity purchasing the services. *See, e.g., High-Speed Services for Internet Access: Status as of December 31, 2003*, at 4 n.11 (June 2004).

[13] The ISP purchases DSL Host service from Qwest once per LATA, pursuant to Tariff F.C.C. No. 1, Section 8. DSL Host service consists of an ATM Switch Port and bandwidth. DSL Host service is not a subject of this petition.

service can buy "naked DSL," a service that Qwest innovated, which is also sold pursuant to tariff.[14]

In addition, Qwest sells "bulk" DSL service to ISPs such as EarthLink and AOL pursuant to tariff. End users then purchase the ISP's branded bundle of DSL transmission and Internet access from the ISP. Moreover, pursuant to Sections 251(c) and 271, Qwest resells its retail DSL service to CLECs at an avoided cost discount in accordance with the pricing provisions of Section 252.[15]

The Commission has decided that DSL is an interstate access service.[16] Thus, when Qwest provides mass-market xDSL service it is subject to the full weight of Title II and common carrier regulation. These requirements include, but certainly are not limited to, dominant carrier tariff regulation and rate averaging. In addition, as mentioned above, Qwest is subject to the

[14] "Naked DSL" allows an end user without a plain old telephone service ("POTS") telephone line to purchase DSL. In the recent introduction of naked DSL, tariff regulation and resale requirements added 60 to 75 days delay to Qwest's roll out of the new service.

[15] Pursuant to Sections 251(c) and 271, Qwest also provides raw copper loops to CLECs as unbundled network elements ("UNEs"), and provides DSL over the UNE-P. Qwest also provides line-sharing pursuant to commercial contract, such as Qwest's contract with Covad and its recently announced commercial agreement with Z-Tel Communications wherein Qwest has committed to provide Z-Tel with access to its Platform Plus Service as a replacement to the UNE-P within Qwest's 14-state service area. In this petition Qwest is not seeking forbearance from the collocation and unbundling requirements of Sections 251(c) and 271. Nor is Qwest filing this petition to request a change in the manner in which it offers line-sharing or its Platform Plus Service.

[16] *See, e.g., In the Matter of GTE Telephone Operating Cos., GTOC Tariff No. 1, GTOC Transmittal No. 1148*, Memorandum Opinion and Order, 13 FCC Rcd 22466 (1998), *aff'd,* 17 FCC Rcd 27409 ("*GTE DSL Order*"). *See also In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers,* Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978, 17070-71 n.465 (2003), *vacated and remanded in part, aff'd in part, United States Telecom Ass'n v. FCC,* 359 F.3d 554 (D.C. Cir. 2004) ("*USTA II*"), *cert. denied, sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs v. United States Telecom Ass'n, 2004,* U.S. Lexis 6710 (Oct. 12, 2004). The tariff is filed in Qwest's *Access Service Tariff* (F.C.C. No. 1, Section 8), *Advanced Communications Networks.*

requirements of 47 U.S.C. Sections 251(c) and 271, which include resale at an avoided cost discount.

Dominant carrier tariff regulation mandates 15-day advanced notice for rate increases, 7-day advanced notice for rate decreases, limits the frequency of rate changes, and imposes cost study requirements, among other things.[17] Since DSL is regulated as an access service,[18] Qwest must charge averaged rates within each of its study areas.[19] In practice that requires Qwest to charge the same rate in both the high-cost and low-cost areas within the same state without regard to whether Qwest confronts intermodal and intramodal competitors.

In this petition Qwest seeks forbearance from dominant carrier tariff and rate-averaging requirements with respect to its sale of mass-market xDSL service to **end users**. Additionally, Qwest seeks forbearance from resale of mass-market xDSL at an avoided cost discount pursuant to Sections 251(c) and 271. Qwest does not seek relief from the resale requirement of Section 251(b) in this petition.

B. The Commission Is Striving To Maintain A "Hands Off" Policy Towards Cable Modem Service

The Commission's regulatory treatment of DSL stands in stark contrast to its policies towards cable modem service. "[S]ince the enactment of the Telecommunications Act in 1996, the Commission has taken a 'hands off' policy toward cable modem service, and the service has thrived during that period. Cable modem service is today the most popular service by which

[17] 47 U.S.C. § 204(a)(3); 47 C.F.R. §§ 61.58, 61.38.

[18] *GTE DSL Order*, 13 FCC Rcd at 22480 ¶ 25.

[19] 47 C.F.R. § 69.3(e)(7). "A study area is a geographical region generally composed of a telephone company's exchanges within a single state." *In the Matter of Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board*, Notice of Proposed Rulemaking, 5 FCC Rcd 5974 ¶ 4 (1990).

consumers obtain high-speed access to the Internet."[20] In the *Cable Modem Decision*,[21] the Commission decided that cable modem service should be classified as an interstate information service under Title I of the Communications Act of 1934. This classification means that cable modem service is presumptively unregulated.[22] Thus, the *Cable Modem Decision* maintains the hands-off policy that has allowed cable modem service to thrive.

Although the Ninth Circuit vacated the portion of the *Cable Modem Decision* that classified cable modem service as an information service, the Commission recently filed a petition for a writ of certiorari seeking to protect its hands off policy. The Commission explains that its analysis in *the Cable Modem Decision* was guided by several overarching principles. These include "the statutory goal of encouraging the deployment" of advanced telecommunications capability to all Americans[23] and "the related goal of fostering investment and innovation in broadband services by creating a minimal regulatory environment."[24]

[20] *Brand X* petition at 25 (citation omitted).

[21] *In the Matter of Inquiry Concerning High Speed Access to the Internet Over Cable and Other Facilities, Internet Over Cable Declaratory Ruling, Appropriate Regulatory Treatment for Broadband Access to the Internet Over Cable Facilities*, Declaratory Ruling and Notice of Proposed Rulemaking, 17 FCC Rcd 4798 (2002) ("*Cable Modem Decision*"), *aff'd in part, vacated in part and remanded, Brand X Internet Services v. FCC*, 345 F.3d 1120 (9th Cir. 2003), *pets. for cert. pending* (U.S. Sup. Ct. Aug. 27, 2004).

[22] *See In the Matter of Federal-State Joint Board on Universal Service,* Report to Congress, 13 FCC Rcd 11501, 11515-16 ¶ 32 (1988) ("The Act imposes no regulatory obligations on information service providers as such."); *In the Matter of Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services Are Exempt from Access Charges*, Order, 19 FCC Rcd 7457, 7460-61 ¶ 6. (2004) ("telecommunications service and information services are separate and distinct categories, with Title II regulation applying to telecommunications services but not to information services.").

[23] *Brand X* petition at 11 (internal quotations omitted).

[24] *Id.* (internal quotations omitted).

The Commission deems maintaining regulatory freedom for cable modem service an issue of "exceptional national importance,"[25] and explains that regulating broadband Internet access service as a telecommunications service "is inconsistent with, and would directly threaten,"[26] the federal policy of promoting broadband deployment. The Commission further argues that cable modem service should remain free from Title II and common carrier regulatory burdens because the effect of such regulation "could lead operators to raise their prices and postpone or forego plans to deploy new broadband infrastructure, particularly in rural or other underserved areas."[27]

Just as increased regulation may lead cable operators to increase price or forego deployment, decreased regulation could incent Qwest to lower xDSL prices or accelerate xDSL deployment plans. Qwest is concerned, however, that there has been no discernible movement on the pending proceedings that could grant some regulatory relief to xDSL services. For example, the Commission is considering whether ILECs should be subject to dominant carrier regulation in their provision of DSL.[28] The Commission is also considering whether access to the Internet over DSL should be regulated under Title II or Title I.[29] Both of the proceedings have been pending for over two years and appear to have stalled.

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[25] *Id.* at 24.

[26] *Id.* at 15.

[27] *Id.* at 26.

[28] *In the Matter of Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services*, Notice of Proposed Rulemaking, 16 FCC Rcd 22754 (2001).

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Consequently, the Commission is deploying its resources to maintain regulatory freedom for the service that dominates the market, while Qwest, a relatively small competitor, must file this petition to seek just a modicum of regulatory relief. This petition is not, however, a substitute for relief in the stalled proceedings. Forbearance does not speak to the issue of whether ILECs providing xDSL service should be regulated as dominant carriers. (They should not.) Nor does forbearance address whether xDSL-based broadband access should be subject to regulation as a telecommunications service in the first place.[30] (It should not.) Nonetheless, in hopes of getting some long overdue relief, Qwest is allocating resources to this proceeding, which will undoubtedly be "time-consuming and hotly contested and [will] assuredly lead to new rounds of litigation."[31]

C. Cable Modem Enjoys Greater Market Share And Less Regulation Than DSL

1. Market Share

DSL service trails cable modem service in market share in the nation as a whole. As of December 2003, cable accounted for almost 60% of all high-speed lines.[32] ADSL accounted for 33.7%.[33] Nationally, RBOCs provided 30.9% of all high-speed lines.[34] As of December 2003 cable modem accounted for an astounding 75.3% of all advanced service lines (lines over 200

[30] *Cf. Brand X* petition at 28.

[31] *Cf. id.*

[32] FCC, *High-Speed Services for Internet Access: Status as of December 31, 2003*, at Chart 2 (June 2004) ("*High-Speed Services for Internet Access*").

[33] *Id.*

[34] *Id.* at Chart 9.

kbps in both directions, a subset of high-speed lines).[35] ADSL accounted for a mere 14.9% of such lines.[36]

DSL's share of high-speed broadband connections in Qwest's 14 states mirrors that of the nation. As of December 31, 2003, the Commission's data confirms that cable modem had over 56% of high-speed lines in Qwest's 14 states.[37] All ADSL, not limited to Qwest ADSL, accounted for only 31% of all high-speed lines in Qwest's 14 states.[38] Nonetheless, Qwest in its 14-state region had a lower share of high-speed connections than RBOCs as a whole across the nation. As of December 31, 2003, Qwest had [Redacted] market share of high-speed broadband connections in its 14 states,[39] compared to the RBOCs' national share of 30.9%.

In Qwest's individual states, cable modem benefits from a high of 75% share of high-speed lines in Nebraska,[40] to a low of 39% in South Dakota.[41] In contrast, DSL service, not limited to Qwest's DSL, ranges from a high of 49% of high-speed lines in Montana to a low of 15% of such lines in Nebraska.[42] *See* attached Table 1. Looking specifically at Qwest, its share of high-speed lines ranges from a high of [Redacted] in Utah to a low of [Redacted] in Nebraska.[43] *See* attached Table 2.

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[35] *Id.* at Chart 4.

[36] *Id.*

[37] We know that cable modem service had more than 1.88 million subscribers in just 10 Qwest states. The Commission did not disclose the number of high-speed cable modem connections in Idaho, Montana, Utah and Wyoming. *Id.* at Table 7. There were 3,324,759 high-speed subscribers in Qwest's 14 states. *Id.*

[38] *Id.*

[39] *Compare id. with* attached Rex Morse Declaration ¶ 5.

[40] *High-Speed Services for Internet Access* at Table 7.

[41] *Id.*

[42] *Id.*

[43] *Compare id. with* attached Rex Morse Declaration ¶ 5.

2. Regulation

DSL's lower market shares may be explained by the fact that DSL is more heavily regulated than cable modem service. In addition to the regulations from which Qwest seeks relief in this petition, there are numerous other examples of asymmetric regulation:

- Qwest is mandated to unbundle network elements.[44] Cable modem providers face no similar requirements.
- Qwest must give its competitors advance notice before it deploys DSL in a new geographic area.[45] As one would expect of a market with vigorous competition, Qwest's mass-market broadband competitors use that information to target with special offers those neighborhoods that Qwest has announced are about to get DSL. For example, just this spring, before Qwest began providing DSL in an Omaha neighborhood, Cox began a special promotion offering half-price cable modem service for six months.[46] Upon roll out, Qwest had low penetration of its xDSL services as a result.[47]
- Qwest is not only mandated to sell its DSL service to ISPs, such as EarthLink and AOL, but is required to do so pursuant to tariff and is not allowed to negotiate individual case basis contracts with such providers even though they are large sophisticated businesses.[48] Most cable modem providers, on the other hand, are able to decide whether to sell to a competing ISP,[49] and such agreements are not regulated. This allows cable modem providers to structure their deals to meet the individualized requirements of each large ISP.
- DSL and cable modem service are even taxed differently. Eighteen states tax DSL but do not tax cable modem. Conversely all states that tax cable modem also tax DSL.
- In another form of taxation, Qwest is required to make a contribution to the Universal Service Fund that is a percentage of its interstate

[44] 47 U.S.C. § 251(c)(3).

[45] 47 C.F.R. § 51.325-51.335.

[46] *See* attached Rick MacInnes Declaration and its associated flyer distributed by Cox.

[47] *Id.*

[48] *See generally Cable Modem Decision*, 17 FCC Rcd at 4824-26 ¶¶ 42-47.

[49] This is not universally true. For example, AOL Time Warner offers multiple brands of cable modem service to subscribers on all of its major systems pursuant to the Federal Trade Commission AOL Time Warner Merger Order. *See Cable Modem Decision*, 17 FCC Rcd at 4828-31 ¶¶ 2-55. The Commission has, however, classified this service as a private carrier service, rather than a telecommunications service. *Id.* at 4830-31 ¶ 55.

> telecommunications revenue, including DSL revenues.[50] Since they are not subject to telecommunications regulation, cable modem providers are not required to make a similar contribution. This asymmetric regulation imposes a significant cost on DSL providers and provides a substantial competitive advantage to cable modem providers. For the third quarter of 2004, the Commission decided that telecommunications carriers must contribute 8.9% of interstate revenue to the Universal Service Fund.[51]

Thus, Qwest's DSL offerings are burdened with the full weight of Title II and common carrier regulation, as well as being subject to different tax and USF contribution levies from their cable modem competition. In comparison, cable modem providers and Qwest's other mass-market broadband rivals enjoy relative freedom. This asymmetry is contrary to the public interest and thwarts Congress's goal of promoting the deployment of high-speed telecommunications capabilities "without regard to any transmission media or technology."[52]

D. The Commission Is Free To Decrease Regulation Where It Finds That Less Regulation Will Serve Its Statutory Goals

Qwest seeks forbearance from regulations put in place under Title II of the Communications Act of 1934, and adopted to regulate monopoly telephone companies in a "one-wire world." There is a marked contrast between the one-wire world and the market for mass-market broadband services. The Commission recognizes this difference. In 1999, the Commission in its first report to Congress on deployment of advanced services said the "record does not indicate that the consumer market is inherently a natural monopoly. . . . By the standards of traditional residential telecommunications, there are, or likely will soon be, a large

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[50] 47 U.S.C. § 254(d).

[51] *See* Public Notice, *Proposed Third Quarter 2004 Universal Service Contribution Factor,* 19 FCC Rcd 10194 (2004).

[52] *Cf. Brand X* petition at 27; Section 706(c)(1), 110 Stat. 153.

number of actual participants and potential entrants in this market. Anti-competitive coordination among competitors is difficult in such markets."[53]

Just this year, the Commission accepted that the United States has a competitive broadband market.[54] The Commission also acknowledged that "having multiple advanced networks will also promote competition in price, features, and quality-of-service among broadband-access providers. This price-and-service competition, in turn, will have a symbiotic, positive effect on the overall adoption of broadband: as consumers discover new uses for broadband access at affordable prices, subscribership will grow; and as subscribership grows, co

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[9] *In the Matter of Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services*, Notice of Proposed Rulemaking, 16 FCC Rcd 22754 (2001).

[10] *In the Matter of Appropriate Framework for Broadband Access to the Internet over Wireline Facilities, Universal Service Obligations of Broadband Providers, Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review – Review of Computer III and ONA Safeguards and Requirements*, Notice of Proposed Rulemaking, 17 FCC Rcd 3019 (2002).

[11] *Petition of BellSouth Telecommunications Inc. for Forbearance Under 47 U.S.C. § 160(c) From Application of Computer Inquiry and Title II Common Carriage Requirements* (filed October 27, 2004). *And see*, Public Notice, WC Docket No. 04-405, DA 04-3507, rel. Nov. 3, 2004.

forbearance petition. Qwest files this petition in order to focus attention on narrow pricing areas where Qwest is in great need of expedited relief. Qwest requests forbearance from dominant carrier tariff regulation (in particular, 15-day tariff notices, the cost support requirement, the required delays between price changes), rate averaging and resale at an avoided cost discount for its mass-market xDSL services.[12]

Since it is not consistent with the public interest to impose these regulations on the market-leading cable modem service, it is unimaginable that maintaining these regulations on the player with a [Redacted] market share is in the public interest. There is no compelling rationale why the second-place player in this market is still the only regulated player. Accordingly, the Commission should grant Qwest's petition.

I. BACKGROUND

A. Qwest's DSL Service Is Covered By Title II Regulation

Qwest has proven to be innovative and creative in how it markets these services and continues to prove that it views the Internet service providers ("ISPs") (as well as CLECs) as major suppliers of its services. For example, an end user can purchase DSL service out of Qwest's tariff and choose any one of over 400 ISPs that purchase Qwest's DSL Host product[13] or the end user may choose MSN's ISP services. Second, an end user without Qwest telephone

[12] Qwest defines the mass-market as service of a type that is normally associated with residential and small business end users. Like the FCC, Qwest defines the market in terms of the products a particular customer buys, rather than the kind of entity purchasing the services. *See, e.g., High-Speed Services for Internet Access: Status as of December 31, 2003*, at 4 n.11 (June 2004).

[13] The ISP purchases DSL Host service from Qwest once per LATA, pursuant to Tariff F.C.C. No. 1, Section 8. DSL Host service consists of an ATM Switch Port and bandwidth. DSL Host service is not a subject of this petition.